



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE APPLICATION)
OF VARTEC TELECOM, INC. EXCEL)
TELECOMMUNICATIONS, INC., VARTEC)
SOLUTIONS, INC., AND COMTEL)
TELECOM ASSETS LP, TO TRANSFER)
ASSETS)

ORDER OF APPROVAL

DOCKET NO. TM05110986

(SERVICE LIST ATTACHED)

BY THE BOARD:

On November 28, 2005, VarTec Telecom, Inc. (VarTec), VarTec Solutions, Inc. (VarTec Solutions), Excel Telecommunications, Inc., (Excel), Comtel Telecom Assets LP (Comtel), (collectively, Petitioners) pursuant to N.J.S.A. 48:2-51.1 filed an application with the Board of Public Utilities (Board) requesting the approval of a proposed transfer of assets. This transfer arises out of VarTec's Chapter 11 bankruptcy proceeding which will enable VarTec and Excel's (together, VarTec companies) current customers to be transferred to Comtel without interruption of service. Upon consummation of the transfer, Comtel will continue to offer services to those customers at the existing terms, rates and conditions. Petitioners are also requesting a waiver, to the extent necessary, of the Board's "slamming" rules, N.J.A.C. 14:10-11.5 et seq., with respect to the customers that would be transferred from the VarTec companies to Comtel.

BACKGROUND

VarTec is a Texas corporation with principal offices located in Carrollton, Texas. VarTec provides competitive local exchange, interexchange, operator and wireless services throughout the United States. VarTec received its authority to provide local exchange services in New Jersey on May 2, 2002. See I/M/O the Petition for an Order Authorizing VarTec Telecom, Inc. to Provide Local Exchange Telecommunications Services Throughout New Jersey, Docket No. TE01100682. Excel, which is also a Texas corporation with principal offices located in Carrollton, Texas, is an indirect subsidiary of VarTec. Excel provides competitive local exchange, interexchange, operator and wireless services throughout the United States. Excel received its authority to provide local exchange services in New Jersey on August 8, 2002. See I/M/O the Petition for an Order Authorizing Excel Telecommunications, Inc. to Provide Local Exchange Telecommunications Services Throughout New Jersey, Docket No. TE02020129.

Comtel is a privately held Texas corporation with principal offices located in Dallas, Texas. Comtel provides resold telecommunications services throughout the United States and is authorized to provide local exchange and interexchange telecommunications services in Wisconsin and Michigan. Comtel received its authority to provide local exchange services in

New Jersey on April 26, 2006. See I/M/O the Application and Petition of Comtel Telcom, Inc. for a Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access as well as Interexchange Service in New Jersey, Docket No. TE05110987.

DISCUSSION

According to the petition, the VarTec companies voluntarily filed for Chapter 11 bankruptcy on November 1, 2004 in the Dallas Division of the United States Bankruptcy Court for the District of Texas (the Court). As part of the bankruptcy process, the VarTec Companies have entered into an asset purchase agreement (APA) with Comtel Investments LLC (Comtel Investments). Comtel Investments, which is wholly owned by the same parties who own and control Comtel, has assigned its rights and obligations under the APA to Comtel as of August 1, 2005. The APA was executed on July 25, 2005 and was approved by the Court on July 27, 2005. Through the APA and the Court-approved auction process, Comtel will acquire all of the assets of the VarTec Companies, including all telecommunications equipment and customer accounts. Following the proposed transaction, Comtel will provide services to those customers at the same rates terms and conditions as the VarTec companies currently provide. The petition states that Comtel plans to maintain the VarTec Companies' existing tariffs on file with the Board and once the transaction is complete, Comtel will update the tariffs to reflect the name change.

The petition also states that following the consummation of the asset transfer, Comtel will be led by a combination of its own management members and certain of the existing management team of the VarTec companies. Petitioners have indicated that the VarTec companies do not have any employees in New Jersey.

Petitioners are also requesting a waiver, to the extent necessary, of the Board's slamming rules with respect to the customers that would be transferred from the VarTec companies to Comtel. Petitioners state that notice will be sent to all affected customers at least 30 days prior to the transfer informing them of the transaction and indicating that there will be no change in rates, terms and conditions of service and that they have the right to change carriers if they chose to do so.

By letter dated March 1, 2006, the Division of the Ratepayer Advocate (Advocate) advised that it recommends approval of this petition but recommends that the Board deny the request for waiver of the anti-slamming rules.¹

FINDINGS AND CONCLUSIONS

After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on service quality to New Jersey customers or the rates they pay. Nor will there be a negative impact on competition. Likewise, there will be no negative impact upon employees in the State. Moreover, a positive benefit may be expected from the transaction as it will eliminate the threat of disruption of service due to the VarTec companies' financial condition. The Board further notes that since this is not a contested case, representation of a corporation by an attorney is not mandated.

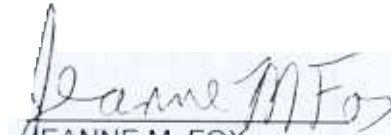
Accordingly, after careful review of this matter, the Board FINDS that the transaction will have no

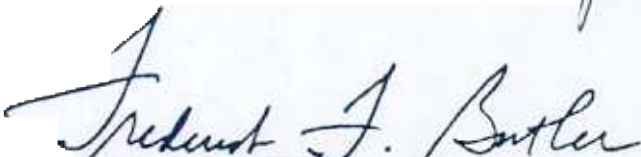
¹ The Advocate did note the lack of attorney representation on the part of Comtel and that the Board should not act unless Comtel retains a New Jersey Attorney or has requested *pro hac vice* for its legal matters. The Board intends to address this issue in the near future and does not take a position at this time.


negative impact on competition, the rates of current customers, or on employees. The Board also FINDS that the transfer will have no negative impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, the Board, after investigation, having considered the record and exhibits submitted in this proceeding, FINDS that the transfer is in accordance with the law and in the public interest. The Board HEREBY ORDERS that Petitioners shall notify the Board of the closing of the proposed transaction within ten (10) days of consummation of the transfer, and shall provide to the Board a copy of the customer notification required by the Federal Communications Commission in connection with the transfer of customers to Comtel. The Board further FINDS that the Petitioners acknowledged they will comport with all relevant State and Federal notification and consent requirements applicable the transfer, and, as such, the Board hereby denies the request for a waiver of the slamming regulations as set forth in N.J.A.C. 14:10-11.3(f). Likewise, the Board ORDERS that nothing in this Order shall be considered a waiver or other action on any possible or pending enforcement action as to VarTec or any of the other Petitioners associated with this application, and nothing in this Order shall relieve any Petitioner of any responsibility to satisfy the Board's Orders, statutes and/or regulations. Finally, the Board FURTHER ORDERS that the approval in this Order shall become null and void and of no effect to the extent it has not been exercised prior to October 30, 2006.


DATED: 5/17/06


BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


CONNIE O. HUGHES
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities

